

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, and for purposes of preliminary hearing, the Appeals Board finds:

The jurisdiction of the Appeals Board to review preliminary hearing findings is governed by K.S.A. 44-534a and K.S.A. 1995 Supp. 44-551. The former statute provides that the Appeals Board may review those preliminary findings pertaining to: (1) whether the employee suffered an accidental injury, (2) whether the injury arose out of and in the course of the employee's employment, (3) whether notice was given or claim timely made, and (4) whether certain defenses apply. The latter statute provides that the Appeals Board has the jurisdiction and authority to review preliminary hearing findings when the administrative law judges have exceeded their jurisdiction.

In the preliminary hearing Order now before us, the Administrative Law Judge did not state the reason for denying claimant's request for benefits. After reviewing the testimony and the medical records presented to the Judge, the Appeals Board finds that the Judge could have denied benefits either because of one of the jurisdictional issues listed in K.S.A. 44-534a or because claimant was neither temporarily and totally disabled nor presently in need of medical treatment. In the former situation, the order is subject to Appeals Board review; in the latter situation, the order is not.

The Appeals Board recognizes the Kansas Workers Compensation Act does not specifically require the administrative law judges to state their reason for the denial of benefits at preliminary hearing. However, the administrative law judges must now recognize that their findings at preliminary hearing are in many cases determinative whether a preliminary hearing order may be reviewed.

Because the Appeals Board cannot be reasonably certain that the Administrative Law Judge denied benefits based upon a finding subject to review, the Appeals Board must reluctantly remand the proceeding to the Administrative Law Judge to add to the Order a brief sentence or statement of the basis for his decision.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this proceeding should be, and hereby is, remanded to the Administrative Law Judge with instructions to state the reason for denying claimant's request for benefits. The Appeals Board does not retain jurisdiction over this proceeding.

IT IS SO ORDERED.

Dated this ____ day of April 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Kevin J. Kruse, Overland Park, KS
H. Wayne Powers, Overland Park, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director